



## **CITY OF NEWPORT BEACH ENVIRONMENTAL QUALITY AFFAIRS COMMITTEE**

**DATE/TIME: Monday, February 22, 2010  
7:00 p.m.**

**LOCATION: Police Department Auditorium  
870 Santa Barbara Drive**

### **Roll Call**

1. Minutes of December 21, 2009 (*attachment*)
2. Report from subcommittee on Draft EIR for Marina Park (1700 W. Balboa Boulevard) and review and approval of comments (*attachments*)
3. Leaf blower update
4. Update on Municipal Code Amendment regarding Smoking Regulations
5. Coastal/Bay Water Quality Committee Representatives' Report
6. Economic Development Committee Representative's Report
7. Report from Staff on Current Projects
8. Public Comments
9. Future Agenda Items
10. Adjournment

**NEXT MEETING DATE: March 15, 2010**

\*Attachments can be found on the City's website <http://www.newportbeachca.gov>. Once there, click on **Agendas and Minutes** then scroll to and click on **Environmental Quality Affairs**. If attachment is not on the web page, it is also available in the City of Newport Beach Planning Department, 3300 Newport Boulevard, Building C, 2<sup>nd</sup> Floor.



## CITY OF NEWPORT BEACH ENVIRONMENTAL QUALITY AFFAIRS COMMITTEE

### DRAFT MINUTES 12-21-09

Draft minutes of the Environmental Quality Affairs Committee held at the City of Newport Beach Police Department Auditorium, 870 Santa Barbara Drive, on **Monday, December 21, 2009.**

#### Members Present:

X	Nancy Gardner, Council Member	E	Barbara Thibault
E	Michael Henn, Council Member	X	Laura Curran
X	Kenneth Drellishak, Chair	X	Vincent Lepore
X	Kimberly Jameson		Kevin Nolen
	Kevin Kelly		Arlene Greer
			Sandra Haskell
X	Michael Smith		Kristine Adams
X	Ed Reno	X	Timothy Stoaks
X	Nick Roussos	E	Jay Myers
E	Joan Penfil	X	Charles McKenna
E	Bruce Asper	X	Debra Stevens
X	Merritt Van Sant	X	Michael Alti

#### Staff Representatives:

#### Guests:

X	Sharon Wood, Assistant City Manager	Robert Hawkins, Planning Commission Philip Bettencourt Terry Welsh, Banning Ranch Conservancy Kevin Nelson
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Chairperson Drellishak called the meeting to order at 7:20 p.m.

1. Minutes of November 16, 2009

Tim Stoaks moved and Merritt Van Sant seconded to approve the minutes of November 16, 2009.

#### Motion passed unanimously

2. Presentation on Water Quality Projects by Robert Stein, Assistant City Engineer

Mr. Stein spoke about two projects: the Integrated Watershed Management Plan, including local control, partnership with the State and regional integration; and the Newport Coast

Watershed Program. Philip Bettencourt provided information on activities by the Newport Coast Homeowners Association related to the Newport Coast Watershed.

3. Assignments and schedule for review of Draft EIR on Marina Park

Chairperson Drellishak reviewed assignments and due dates for comments.

4. Task Force on Green Development Representative's Report

Council Member Gardner reported that the Task Force has sunset, and this item should be removed as a standing agenda item.

5. Coastal/Bay Water Quality Committee Representative's Report

Council Member Gardner reported on a local experiment regarding the source of bacteria in runoff.

6. Economic Development Committee Representative's Report

Chairperson Drellishak reported that the BCS national championship football game will be played in Pasadena, and media headquarters, as well as some alumni headquarters, will be in Newport Beach. EDC reviewed a report from the Water Taxi Exploratory Committee at their December meeting.

7. Report from Staff on Current Projects

Sharon Wood reported that staff is working on Draft EIRs for Banning Ranch and a contained aquatic disposal site for Newport Harbor dredging, as well as the Zoning Code rewrite.

8. Public Comments

Robert Hawkins commented that EQAC should continue its rigorous analysis of environmental documents. Chairperson Drellishak noted that he received a complimentary letter from a resident regarding EQAC's comments on the Sunset Ridge Park Draft EIR. Terry Welsh spoke about the mission of the Banning Ranch Conservancy, and noted that the group is concerned about the access road to Sunset Ridge Park. Kevin Nelson spoke about his concerns about water quality impacts from the proposed Banning Ranch development, and his concerns about how the Sunset Ridge Park Draft EIR analyzes impacts to wetlands and gnatcatcher habitats.

9. Future Agenda Items

January – Meeting cancelled

February – Review of Marina Park Draft EIR

10. Adjournment

Chairperson Drellishak adjourned the meeting at 9:00 p.m.

To: Rosalinh Ung  
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23 February 2010

From: Environment Quality Affairs Citizens Advisory Committee (EQAC)

Subject: Comments on Marina Park REIR dated January 2010

EQAC is pleased to take this opportunity to provide comments on the referenced REIR. Our comments are generally listed in their order of appearance in the documents with page and paragraph references as needed. We hope that they are constructive and assist the proponent in producing the best possible project for the City of Newport Beach.

## **2. Executive Summary**

Page 2-5, 5.2-A: The conclusion under “Cumulative” in the first column should be “Potentially Significant.” The impact is mitigated to less than significant as indicated in the 3<sup>rd</sup> column of that box.

## **3. Project Description**

Project Features - It is stated that (pg. 3-8) that the small-boat launching facility will remain at the foot of 18th Street. This is a typo – that facility is at the foot of 19<sup>th</sup> Street.

Regarding the 73-foot high representation of a lighthouse (pg. 3-11) - How was this height arrived at? What factors were considered in this decision? Does this height pose any risks, view obstructions, etc.?

Does the Girl Scout building that is to be demolished have any historic significance? If so, can it be saved, moved, etc?

Is there analysis to show that two half-court basketball courts are adequate? This is a very popular activity that appears to be in high demand, especially during good beach weather.

Need the pathways be paved? Have alternatives, such as environmentally sound composite decking material, been considered?

What is the anticipated timing for the beginning of Phase 3 construction after Phase 2 construction has been completed? In other words, are the interim Phase 2 improvements necessary, or can the project proceed from Phase 1 to Phase 3 and therefore not lose all the temporary Phase 2 improvements? Moreover, to what extent can the Phase 2 improvements be used by the public during the Phase 3 construction period? The less that the park can be used during the Phase 3 construction period, the less it makes sense for the temporary Phase 2 improvements.

Operation (pg. 3-19)-The Balboa Center "...would also be available for private functions on a rental basis." To what extent? Clearly, rental events will conflict with peak period usage by the public, as both the rental events and public usage will be greatest on weekends.

Short-term harbor based users will be permitted to utilize the marina berths for up to 30 days. This duration seems excessive, and can lead to a few boats tying up the majority of the marina (which calls for only 23 berths) during peak season.

#### **4. Environmental Setting**

Clarification regarding the OLQA Church expansion (Table 4-1, pg.4-2) - The school is already 100% completed. However, the new church and gymnasium have yet to break ground. Does this affect any analysis?

#### **5.1 Aesthetics**

In response to previous EQAC concerns, the commitment to try to relocate existing mature trees at Veterans Park to accommodate repositioned tennis courts is positive (pg. 8-39). Also, use of low wattage lamps in the lighthouse (pp. 8-39,40) should be adequate to insure negligible impact on the adjacent properties.

Following are additional general comments regarding aesthetics:

1. In general, the environmental aesthetics described in the REIR is a major improvement over the current mobile home "park". The removal of current vegetation and replacement with new vegetation is also a monumental improvement and will be more "green".
2. The improvements will be a better use of the environment for more people, not just the few who reside in the mobile homes and the current visitors, as the new park will be open to all and will also draw more visitors, both from within and without our city: e.g. visiting vessels, an additional basketball court and improved tennis courts (reducing the number of tennis courts by ½ should please nearby

residents with less noise and only two sets of court lights with new and improved hoods in place of four).

3. Environmental friendly and easy cleanup will result from new restrooms and washing machines.
4. Consideration of wind velocity and direction leads to cleaner air.
5. Permeable paving on parking lots is environmentally friendly and attractive.

## **5.2 Air Quality**

.Modeled data is used to determine the significance of environmental impacts and it seems that the observations taken for local air quality, and then used to generate all the modeled data, might be flawed. Observations taken in locations that seem less than relevant to the Marina Park project located on Newport Peninsula need to be justified (See Section 5.2.3 – Existing Conditions, “Local Air Quality”). The SCAQMD’s closest monitoring station for communities in its Central Orange County Coastal region is Source Receptor Area 18. This collection point for all current air quality data (except particulate matter pollutants, PM<sub>2.5</sub> and PM<sub>10</sub>) is located on Mesa Verde Drive in Costa Mesa, approximately 4 miles inland from the proposed Marina Park. The data collection point for PM<sub>2.5</sub> and PM<sub>10</sub> is located in Mission Viejo, over 14 miles away.

For a project of this importance and given the obvious efforts expended by the writers of this REIR it would seem appropriate to obtain observations of current air quality conditions on or much closer to the site of the project. If use of portable testing equipment of precision needed to produce reliable on-site observations is not feasible or if experts needed to conduct the tests are not available this should have been explained. Or if the suitability of the data collected at these distant locations for producing data models was justified using appropriate SCAQMD references as support, then it would have been clear that the writers of the REIR took the initial DEIR reviewers’ comments to heart. As it stands this REIR provides no justification why local air quality data from these distant test sites is acceptable for use as the basis for all modeled data. This is clearly a shortcoming of this REIR and needs to be addressed.

Irrespective of the concern discussed above, the big picture for Air Quality painted by the REIR is one of minimal potential for findings of significant Air Quality issues by the Marina Park project. In fact, the only hard and binding guideline for determining significant air quality issues is the Air Resources Boards preliminary guidance (see page 5.2-9, paragraph 2) and City of Newport Beach’s own guideline concerning Green House Gas emissions. This guideline considers residential (including park) projects emitting  $\leq 1,600$  metric tons of CO<sub>2</sub>e per year as less than significant, therefore requiring no further analysis. (See 5.2-I). The Marina Park project did not come even close to this threshold during either construction or operation, even without mitigation. Federal air

quality standards, California Environmental Quality Act, Air Resource Board, and South Coast Air Quality Management District guidelines and checklists for evaluation resulted in almost no other concerns during the project's three construction phases or during operation of the project, even without mitigation efforts.

In spite of this rosy outlook for the Marina Park project, there are a few questions and concerns in response to the REIR:

1. Page 5.2-11; paragraph headed by City of Newport Beach, last sentence – Are the words “do not” at the beginning of this sentence a typo? They seem to conflict with the intended meaning of the sentence.
2. Page 5.2-13, paragraph headed by Analytical Methodology – Over a dozen tables in Air Quality section of the REIR were prepared to present detailed analysis of emissions in order to determine significance during construction phases and operation of the Marina Park project. The data for federally identified criteria pollutants plus pollutants identified by the State of California were developed using modeling of the current air quality data collected for analysis. These modeling protocols include:
  - URBEMIS 2007 Version 9.2 for air quality modeling and greenhouse gas emissions (except tugboat emission).
  - CALINE4 for CO2 hotspot and vehicular traffic cumulative volumes for worst-case scenarios.

The production via modeling of this data is obviously a critical step needed to make determinations of significant environmental impacts, yet at no point in this section of the REIR is an explanation offered why these modeling protocols were chosen, what they do, how they do it, possible alternatives or any statement concerning the accuracy of the modeled data. These concerns should be addressed.

3. Page 5.2-21; Project Emissions, Phase 3 – In order to estimate criteria pollutants in the operational phase of the Marina Park project the REIR assumes that 100 boats would taxi for one hour per day. These results were then modeled using the federal Environmental Protection Agency's NONROAD model. The REIR confirms that a wide range of boats will be accommodated by the marina docks, berths and the City's sailing programs. Boats up to 40 feet in length can be moored in the marina's 23 slips. These larger boats all presumably have on-board propulsion systems. Boats ranging in size from small unpowered dingies to large 60 foot plus power boats will tie off on the marina's 200 feet of floating docks. The REIR does state what boats make up the 100 boats that are estimated to taxi one hour per day. It doesn't cite data that estimates the boats likely to use the 23 berths nor what type of power plants do they use. Larger boats tend to use diesel engines that generate a higher output of toxic air contaminants. None of these variables are addressed which leads to concern about the accuracy of the data generated for study.
4. Page 5.2-22; Carbon Monoxide Hotspot Analysis Phase – The REIR states that for the purpose of studying traffic generated CO2 hotspots, the intersections of Newport

Blvd. @ Via Lido and Newport Blvd. @ 32<sup>nd</sup> Street were analyzed to develop estimates of 1-hour and 8-hour CO concentrations. Why were these two intersections chosen for study? The closest intersection (Newport Blvd @ 32<sup>nd</sup> Street) is ~ 3000 feet from the nearest corner of the Marina Park project. Wouldn't a closer signalized intersection provide more relevant data? Please address this question.

Pages 5.2-37 & 38, Level of Significance After Mitigation – Mitigation Measures MM 5.2-I.1 through MM 5.2-I.4 are cited on page 5.2-37. Mitigation Measures 5.2-I.6, 5.2-I.8, 5.2-I.10 and 5.2-I.11 are cited on page 5.2-38. None of these mitigation measures are explained as are, for example, Mitigation Measures 5.2-A.1 through 5.2-A.3 on pg. 5.2-17. Please provide a brief explanation of these mitigation measures.

Air Quality emission calculations in Appendix C assume that construction activities would begin in 2009 and the project would be operational in 2010. Suggest that the emission calculations be updated as construction will not start under mid-2010 and not be completed until 2011.

Page 5.2-13, first paragraph under Analytical Methodology, about 2/3rds into the paragraph. The sentence that reads “The CO<sub>2</sub> hotspot analysis used the CALINE4 model . . .” should be revised to say “The CO hotspot analysis used the CALINE4 model . . .” (not CO<sub>2</sub>).

### **5.3 Biological Resources**

Page 5.3-16 Text: “The placement of dredged material would have a significant impact on grunion if it took place during the peak spawning season”.

How will the construction timing be managed to reduce the potentially significant impact on grunion?

Page 5.3-19(MM 5.3-A.2) Text: “During Phase 3 project construction, the City of Newport Beach shall require that the use of sound abatement techniques be used to reduce noise and vibrations from pile-driving activities. At the initiation of each pile-driving event and after breaks of more than 15 minutes, the pile driving shall also employ a “soft-start” in which the hammer is operated at less than full capacity (i.e., approximately 40 to 60 percent energy levels) with no less than a 1-minute interval between each strike for a 5-minute period.

A biological monitor shall be on-site to monitor effects on marine mammals, including flushing responses and symptoms of stress or damage. The biological monitor shall also note (surface scan only) whether marine mammals are present within 100 meters (333 ft) of the pile driving and, if any are observed, temporarily halt pile driving until the observed mammals move beyond this distance”.

What other methods, beyond surface scan, have been considered for the biological resources monitoring portion of the MM? Why was surface scan chosen?



Page 5.3-21 Text: “the benthic community would re-colonize the sediments”.

What is the foundation for this assertion? What other sites with similar characteristics have been successful in re-colonization of the benthic community?

Page 5.3-22 Text: “In recognition of this potential impact, Phase 3 of the project includes the installation of circulation- enhancing devices in the marina (see Section 5.7 for a fuller discussion of the devices). These devices would improve water quality by raising dissolved oxygen concentrations and improving flushing times within the marina basin. Both the small size of the basin (1.7 ac) relative to Newport Bay and the installation of circulation enhancement devices would substantially reduce the magnitude of the impact. In the long term, the creation of an additional 0.9 acre of shallow water (the marina basin), would be beneficial to managed species in the Coastal Pelagics and Pacific Groundfish FMPs by increasing the amount of EFH available to them. Accordingly, direct impacts on managed species from operation of the marina would be less than significant”.

How will the success of the circulation- enhancing devices be measured? What will be done if the desired results are not achieved?

These comments from the EQAC response on the original DEIR still apply:

The EIR should analyze whether the use of non-native landscaping would have an impact on the marine environment.

The Project Objectives are missing a critical component, i.e. the opportunity to showcase the bay setting and its habitat, and make it part of the visitor experience.

What is impact of park lighting on night sky? Will it be more or less than current? How could that impact the ability of birds to nest at the site?

## **5.4 Cultural Resources**

The REIR includes a very conscientious and thorough analysis of any reasonable or likely disruption to any and all cultural resources in their study for this project. This evaluation includes their thoughtful responses to public comments of concern. Any potential steps that might need to be taken, should the pre-construction inspection of the site have missed a cultural resource, have been planned and implemented, if necessary. This includes the hiring of experts in the field to monitor this follow up to assure protection of the cultural resource. We see no potential need for mitigation measures for this section.

The City's approach to the project, in having an alternative to phase the work is both prudent and appropriate, given the economy, the city's budget shortfall and public opinion on both. Additionally, the sequence of work in the three phases shows public minded planning.

## **5.6 Hazards and Hazardous Materials**

Sediment Evaluation, pg. 5.6-4: The REIR does not clarify the depth of the core samplings at sites B & C. It simply restates the previous data with the confusing MLLW description of core depth. The document states that "the project would... consist of extensive excavation of the marina" (5.6-7). Both the terms "extensive excavation" and the MLLW (depth of core samplings) descriptions are vague and do not describe either the depth of the excavation or the level of contamination at that depth.

Project Specific Analysis, pg.5.6-6, MM 5.6A states "approximately 3000 cubic yards of dredged material with elevated levels of mercury..... and 300 cubic yards of PCB contaminated soil .... would be transported by truck". Since transporting more than 500 lbs, 55 gallons or 200 cubic feet of contaminated material requires a Hazardous Management Plan, will such a plan be submitted? (California Health and Safety Code, Chap. 6.95)

Site Soil Investigations, pg.5.6-4 states that 300 cubic yards of soil at the project site are PCB contaminated, but does not state the levels (ppm) of the contamination. Please clarify.

Accident Conditions, MM 5.6B (pg. 5.6-8 of the original DEIR): Concerns raised in response to the first draft of this DEIR regarding location of the project and heavy traffic in that area suggested need for the development of a time table for dredging, truck staging, barges and a traffic management plan. These have not been adequately addressed in this REIR.

Project Specific Analysis, Pg. 5.6-8 restates the fact that the new marina will not include a maintenance area, but does not address the concerns raised regarding vessels in the marina disposing of accumulated waste.

Page 5.6 11: The original DEIR stated: "the project will not constrict access...the onsite circulation system...". No onsite circulation system plan was included in the document and therefore could not be evaluated. The new REIR does not include an onsite circulation system plan and cannot be evaluated.

Appendix G contains hundreds of pages of reports on the core samples. What is the process for determining the significance of all that data?

## 5.7 Hydrology and Water Quality

Page 5.7-8 3rd Paragraph 4th sentence: The study found that there would be adequate tidal flushing only about one quarter of the way into the basin...

This is left as a significant and unacceptable impact on water quality. What design changes and/or mitigation measures have been considered to alleviate this problem? Are there other marinas in the Newport Bay that allow this condition to exist?

## 5.8 Land Use and Planning

### Land Use Regulation

The adopted planning documents regulating land use within and around the project site are the City of Newport Beach General Plan, the City's Local Coastal Land Use Plan (CLUP), and the Zoning Code.

Mitigation should be addressed regarding the following:

- Section 4.4.2-3 of the CLUP, indicates that shoreline height limitations of 35 feet be regulated by the Zoning Code.

The Lighthouse height is proposed at 73 feet, over twice the height allowed. The REIR states that the Lighthouse is an "architectural feature" which exempts it from the City's Zoning Code restrictions. The REIR also states that the lighthouse's purpose is to provide a point of reference and direct the public to the site.

Has an alternative design been provided for the public to consider? Furthermore, it is of greater concern since the REIR states that the City is planning to exempt the project from the provisions of its own zoning regulations.

- The findings regarding the consistency with the General Plan are also questionable, under LU 5.6.2 Form and Environment.

The REIR needs to address how it finds the 73-foot "architectural feature" compatible with the surrounding uses, and address the abrupt change in scale that is to be avoided, per this section of the General Plan.

## 5.9 Noise

Why do the limits for acceptable values in the Land Use Compatibility Matrix (Exhibit 5.9-1, pg. 5.9-2)) differ from those described as "clearly compatible" in the second paragraph on pg 5.9-3? This seems to conflict with the model results presented for year 2011 with and without the project as presented in Appendix I.

Table 5.9-10, pg. 5.9-16, gives the calculated construction noise (all phases of

the project) at sensitive receptors. Estimates vary from a maximum of 92 dB at the residences along the west side of 18th Avenue, west of the project site, to a minimum of 66 dB at Newport Elementary, located southeast of the project site (Table 5.9-10). There is a concern that these noise levels for the duration of the construction will have a strongly deleterious impact on the sensitive receptors noted. Are there no mediations that can be achieved (e.g., noise attenuating barricades around the construction site, or at particular sites -- i.e., Newport Elementary School) that can address this serious negative impact?

Page 5.9-11 suggests pile driving will be present for a period of 2.5 months (although page 5.9-15 states 3 plus 14 weeks, or 17 weeks, i.e., 4.25 months) within a 12 month period (Phase 3 construction). Has some consideration been given to the timing of Phase 3 construction, to limit the negative impacts to Newport Elementary School children during the academic year? In general, what scheduling considerations have been given for the 24 months of all phases of construction regarding the sensitive receptors (i.e., Newport Elementary School). Considerable data exists suggesting such noise will impact the learning and development of such receptors during the mentioned construction periods. No specific discussion of this negative impact is made in the report.

## **5.10 Public Services**

The comments submitted initially and relative to the original DEIR dated February 26, 2009 have been addressed in the REIR dated January 2010 and are the following:

**Tennis Courts** The City of Newport Beach Recreation and Senior Services Department conducted a study to determine community use of the existent four tennis courts and determined more than two courts were in use four percent of the time over a period of one year. The proposed project would not significantly affect the existing recreational use of the tennis courts. Section 8, 8-44, Response to Comment A11- 27

**Increased need for lifeguard services.....**The REIR report referenced a City Of Newport Beach Lifeguard Department recommendation for the installation of a new lifeguard tower located between the existent at 18<sup>th</sup> St. and the American Legion lease line in Phase I, II and would be constructed for the ultimate buildout of Phase III. Section 8, 8-44, Response to Comment A11 – 28

**Demolition and loss of Tot Lot and Tennis Courts during construction ...**The REIR addresses the initial comment relative to the loss of the use of the tot lot and tennis courts during construction. The project schedule proposes to build the tennis courts and tot lot prior to removal of the existing facilities (pg. 8-44, Response to Comment A11- 28).

## **5.11 Transportation and Traffic**

Typo on page 5.11-1, heading 5.11.2, Regional/Local,  
Line 2: Remove "very" and insert "every".

The REIR notes that parking spaces are for Marina Park and not for general public/beach goers. However, they don't present specific plans on how to control this situation.

Item A10-15 (pg. 8-37) - notes 159 parking spaces total will be created for the project. They note that "details regarding the Parking Management Plan (PMP)....would be determined during the final design of the project". Without the PMP now, it is impossible to determine the adequacy of the proposed 159 spaces or their utilization. At least a preliminary PMP should be presented at this point to allow evaluation of the parking provisions.

It is counter-intuitive that the traffic analyses show that the basic project and the cumulative effects result in "less than significant" traffic impacts for all cases considered (pg. 5.11-11). This is among the most congested areas in the city and one would expect significant periodic traffic congestion during all phases of the project and serious disruptions if the cumulative effects of overlapping Banning Ranch, Sunset Ridge and 2300 Newport Blvd. (Newport Bay Marina) projects are considered. We suggest that the analysts re-evaluate the traffic analysis assumptions (e.g. current background levels, current ICU and LOS for critical intersections, predicted project contributions, phasing of cumulative projects) to be sure that this project can be accomplished without any form of traffic mitigation.

## **6.0 Alternatives to the Proposed**

The discussion of alternatives is too brief. At minimum, the impacts on each of the environmental resources should be discussed and compared to the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison (CEQA Guidelines 15126.6).

## **Conclusion**

EQAC thanks you for the opportunity to comment on this significant project for the Balboa Peninsula and the City of Newport Beach. We recognize that it will yield major positive benefits for the residents and visitors to Newport Beach, including many boaters who are searching for expanded docking and mooring facilities, and we trust that our comments are helpful in accomplishing that goal.